

RECEIVED
MAY 19 2011

TOWN CLERK, ACTON

DECISION 11-02

**DECISION ON THE PETITION BY PIERRE RICHARD
149 GREAT ROAD**

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, March 7, 2010 on the **PETITION FOR REVIEW** by Pierre Richard pursuant to Section 10.1.1 of the Acton Zoning Bylaw seeking to overturn the Zoning Enforcement Officer's determination that the proposed new commercial signage would be a violation of Acton Zoning Bylaw. The property is located at 149 Great Road Map F4/Parcel 37.

Sitting for the Board of Appeals were Ken Kozik, Chairman, Jonathan Wagner, Member and Marilyn Peterson, Member. Also present at the hearing were Scott A. Mutch, Assistant Town Planner and Zoning Enforcement Officer, Cheryl Frazier, Board of Appeals Secretary, Pierre Richard (the Petitioner), Attorney Alex Parra and David Johnson and Cate Lynch appearing on behalf of the management company for the property (Brookside Shops).

Chairman Kozik opened the hearing and read the contents of the file. The file included, in part:

1. petition
2. application for proposed sign
3. pictures of the proposed sign
4. pictures of the building
5. Interdepartmental Memo from Health Department stating "no comments"
6. Interdepartmental Memo dated March 1, 2011, to the Board of Appeals from Scott Mutch, rejecting the sign permit
7. Interdepartmental Memo dated March 3, 2011, from Roland Bartl, Acton Town Planner, stating Scott Mutch made the right decision under the Acton Town zoning bylaws but some relief should be granted because it would be unfair to deny it
8. Interdepartmental Memo dated March 1, 2011, from the Board of Selectmen, recommending the Board allow the sign and that it be similar in dimensions to the existing signs at the Plaza. The Board of Selectmen also felt that the zoning for the Plaza should be changed from R-8 to Commercial and that that would be best in the long term
9. various photographs of signage from other businesses located at the plaza.

Chairman Kozik opened the hearing by stating that he thought it would be more efficient to first hear from Scott Mutch, the Zoning Enforcement Officer, to explain why he determined that the proposed sign requested by the Petitioner would be in violation of the Acton Zoning ByLaw; and more particularly to explain the detailed analysis contained in his 2/3 letter to the Petitioner and his 3/1 Interdepartmental Memo.

Chairman Kozik opened the hearing by stating that he thought it would be more efficient to first hear from Scott Mutch, the Zoning Enforcement Officer, to explain why he determined that the proposed sign requested by the Petitioner would be in violation of the Acton Zoning ByLaw; and more particularly to explain the detailed analysis contained in his 2/3 letter to the Petitioner and his 3/1 Interdepartmental Memo.

Mr. Mutch first explained that this situation was unique and was very unfortunate for the Petitioner; but he was constrained by the terms of the Special Permit under which the shopping center was built and the application of the present Acton Zoning ByLaw. Mr. Mutch went on to say that the shopping center (Brookside Shops) where the Petitioner's business is located was built pursuant to a Special Permit issued by the Board of Selectmen in 2001. The site is presently zoned residential (R-8 Zoning District) and was so zoned at the time the Special Permit was issued. However, because the site plan for the shopping center had been submitted for town approval in 1990 when the site was zoned for commercial use as a General Business District, the site was governed by the standards and restrictions for commercial or business use in effect in 1990, except that such application of commercial or business use would be in effect only for a period of 8 years from when the site plan was approved in 1995 until February 1, 2003; whereupon the site became subject to the standards and restrictions of the zoning district in effect on that date, i.e. residential R-8 Zoning District. Although Mr. Mutch believed that existing signage previously approved at the shopping center could be changed and replaced as permitted by present commercial use applicable to non-conforming signs, the unusual and unfortunate facts of this situation was that the proposed sign was not a "relettering" or "refacing" of an existing sign but the placement of an entirely new sign; and since commercial signage is prohibited in a residential R-8 Zoning District, the requested sign would be in violation of the Acton Zoning ByLaw.

Mr. Mutch further explained the unusual circumstances by which the Petitioner's sign was classified as a "new" sign and not "relettering" or "refacing" of an existing sign. The Petitioner's unit was part of (approximately one-half) a larger single unit that had been occupied as a restaurant ("O'Naturals"). The restaurant had one sign (which had been approved by the town). The restaurant ceased operations and in 2009 the owner sought permission to and was authorized to subdivide the single unit into two units. The first unit was occupied by a children's clothing store ("Gymboree"), which applied for and was issued a license to erect a sign where the prior restaurant sign had been. The sign was similar in size and style as the previous restaurant sign and all other signs in the shopping center. However, when the Petitioner commenced occupancy of the second subdivided unit (after Gymboree) and sought permission to install its own business sign ("Elements") on its facade, Mr. Mutch determined that because the Gymboree sign had replaced the previous (lawful) sign, the Elements sign was a new sign which is prohibited in a residential R-8 Zoning District, i.e. the Gymboree sign had "used up" the available approved signage at the shopping center and the Petitioner's sign constituted additional signage.

The Petitioner was asked whether he disagreed with anything that the Zoning Enforcement Officer had said or he wished to add anything to what Mr. Mutch had said; and he responded that he had always acted in good faith in deciding to open his business and he was just trying operate a clean, wholesome business that would be a welcome presence in Acton.

The Members asked Mr. Mutch whether it was possible or likely that the present situation would reoccur, i.e. the configuration of the shopping center could change, resulting in different signage needs consistent with the change in configuration and occupancy. Mr. Mutch acknowledged that this indeed was likely; but that the solution was to change the zoning for the site from residential to commercial to accommodate the commercial usage.

The Members also asked Mr. Mutch whether Petitioner's proposed signage was substantially similar in size and style as the previous O'Naturals sign and all other signs in the shopping center; and he responded that it was. However, he added that permitting the Petitioner's sign together with the Gymboree sign meant that there were 2 signs at the location instead of the single O'Naturals sign.

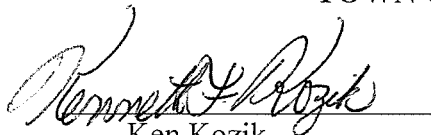
The Board of Appeals, after considering the materials submitted with petition, together with the information developed at the hearing finds that:

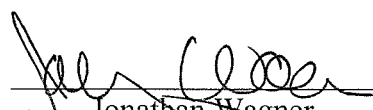
1. The Petitioner seeks to overturn the Zoning Enforcement Officer's determination that the proposed new commercial signage would be a violation of Acton Zoning Bylaw.
2. The subject location is situated in a commercial shopping center that was built pursuant to a Special Permit issued by the Board of Selectmen in 2001.
3. The subject location was situated in a General Business District at the time site plan was approved and at the time the Special Permit was issued. Commercial signage in such General Business District was permitted (if otherwise in accordance with applicable terms and conditions of the Acton ByLaw then in effect).
4. The subject location is presently situated in a residential zoning district R-8 Zoning District. Commercial signage is prohibited in residential zoning districts.
5. Since the Special Permit was issued and the shopping center has been in existence:
 - (a) commercial signage identifying the occupants of the shopping center has been applied for and approved by the town, and
 - (b) previously approved signage has been replaced, re-faced and re-lettered on a routine basis.
6. Petitioner's proposed sign is substantially similar in size and style to existing and previous signs at the shopping center (and is otherwise not detrimental to shopping center and site).

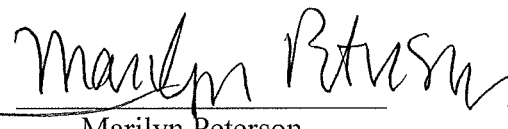
Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted unanimously to **OVERTURN** the Zoning Enforcement Officer's determination that the proposed new commercial signage would be a violation of the Acton Zoning Bylaw and to permit the installation of the Petitioner's sign.

Any person aggrieved by this decision may appeal pursuant to Massachusetts General Laws Chapter 40A, Section 17 within 20 days after this decision is filed with the Acton Town Clerk.

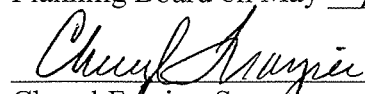
TOWN OF ACTON ZONING BOARD OF APPEALS


Ken Kozik
Chairman


Jonathan Wagner
Member


Marilyn Peterson
Member

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on May 19, 2011.


Cheryl Frazier, Secretary
Board of Appeals